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BATTERED WOMEN: A SOCIO-LEGAL PERSPECTIVE OF THEIR EXPERIENCES IN NAIROBI

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ABSTRACT The literature and research on domestic violence against women have received increased attention in the 1980's and 1990's, but research on wife beating/battering is still sparse. This paper reports from a research project in Nairobi that focused on the legal experiences of battered women and their perceptions of the violence. Findings reveal that the problem of battering is rampant and most battered women do not seek legal intervention. It was also found that a majority of the women remained in intimate relationships with their batterers due to economic dependence on the batterers and lack of alternatives outside the relationship.

Key Words: Domestic violence; Legal Experiences; Nairobi; Kenya.

INTRODUCTION

For many years rape, domestic abuse, and other forms of violence against women were considered to be private matters, best kept silent and in the family. Efforts to eliminate such abuses were deemed futile and when placed against "real issues," concern with gender specific violence is often still minimized as trivial (Green, 1999: 1).

However, in recent decades, domestic violence against women has emerged as one of the most widespread and frightening problems in the world. Although this violence varies widely in form and prevalence, it is virtually universal and usually results in severe physical injury for the victims who are women, at times resulting in death (Ondicho, 1993; 1997: 24). Consequently, it is increasingly being recognized as a major political, social, legal, economic and developmental problem. Whether domestic violence operates as direct physical violence, threat, or intimidation, it perpetuates and promotes hierarchical gender relations. It is manifested in several forms, but all serve to preserve male control over resources and power.

The United Nations General Assembly in adopting the Universal Declaration on the Elimination of Violence Against Women defined violence against women as "any act of gender-based violence that results in, physical, sexual and psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life" (United Nations, 1995). This abuse usually involves a variable combination of the threat of violence, emotion violence, forced sex, and physical assault (Kelly, 1988). Manifestations include: beating, biting, kicking, boxing, slashing, stabbing, spitting, scalding, and strangling. The consequences include physical and mental pain and suffering, disfig-

urement, temporary and permanent disabilities, miscarriage, maiming and death (Copelon, 1994). In this study, wife battering was defined as the violent victimization of women by the men to whom they are married or with whom they share a marriage-like relationship.

Although disagreement and debate about the extent of domestic violence in Kenya remain, there is an underlying consensus that the incidence of wife beating has increased quite substantially in the last few decades (Ondichio, 1997; Wamalwa, 1987). Some cases have captured public attention because of the sheer magnitude of the battering, as multiple injuries or murders, or because of the high status of the victim or the perpetrator, or because the battering was horrific in other respects.

The much-publicized case of Piah Njoki in 1983, in which her husband gouged out both her eyes for bearing him only female children is one such incidents (Kiboi, 1984). The bruised, swollen face of Betty Kavata groaning in pain in a bed at the Kenyatta National Hospital was carried both in print and electronic media in 1998 (Anonymous, 1999). Her husband, who was an officer in the Kenya police force, had battered her. She later died of the injuries. In 1999, Mary Akinyi was slashed on the head, face and hands by her husband for singing along a "ndombolo" to the radio in front of a guest (Anonymous, 1999). "Ndombolo" is a Zairean dance style in which women grate hips in a sexually provocative manner. The three cases brought public attention and focus not only on marital violence but also to the justice system that has failed to stop family violence. When these cases came to light, the public seemed to care much about battered women and wondered why men battered women, and what could be done to stop them. However, public concern faded before any justice was done and thus, the perpetrators went largely unpunished. The state laws seem to condone the violence, as the government does not take any action until, perhaps, when somebody was seriously injured or killed.

Despite the fact that such incidents are instrumental in arousing the public and drawing the state's attention to the magnitude of family violence and the need to take immediate action, the violence continues unabated. The reality is that there are no explicit provisions in the penal statutes proscribing acts of violence against women within the family. The first government attempt to address the problem of wife beating was voiced in 1966 when the Commission on Marriage and Divorce was set up. The Commission was charged with, among other objectives, the task of developing proposals for a new law on marriage and divorce. This mandate was interpreted to include the problem of wife beating. The commission recommended that a proposed bill explicitly outlaw wife beating. When the bill was brought to Parliament in 1968 all male legislators opposed it, arguing that wife beating was a "normal" customary practice and that such a law could amount to undue state interference in the domestic affairs of husband and wife (Hansard, 1968). This amounted to a legal gap in effectively dealing with domestic violence.

Some professionals and many lay people have attempted to argue that family violence is a new phenomenon, as many traditional African societies did not have labels for this evil (Ondichio, 1997). On the contrary, documented evidence indicates that in traditional African patriarchal societies, wife beating existed and was accepted as a justifiable or "culturally consistent" behavior for conducting acceptable behavior from women or wives (Ward, 1938: 84; Contran, 1968). For instance, the

woman upon marriage and payment of bride wealth owed the man exclusive sexual rights and obedience. This gave the husband the freedom to batter her, if he felt that she had not adequately fulfilled her obligations or for any other reason (Harris, 1964). However, what was considered harsh dealing with a wife or wives was sanctioned by popular norms and values. Frequent, severe, and excessive beating was abhorred (Wilson, 1950: 135). For example, the husband must not break the skin of the woman in a beating, beat a wife while pregnant, or kill her. At the same time, there existed elaborate mechanisms to redress the woman in case of unjust or particularly cruel treatment (Ward, 1938).

However, rapid disintegration of traditional socio-cultural norms and values that used to regulate wife beating, i.e., the transformation from extended to nuclear family, urbanization, and modernization along with the newly introduced wage economy, education, and migration have altered the circumstances under which the violence occurs. As Adepoju and Oppong (1994 cited in Green, 1999: 29) stated: “... the education of women, the increase in female labour force participation, the improved status of women and the diminishing role of the extended family in resolving marital disharmony both empower women and render them vulnerable to gender violence.”

Thus, battering is explained as motivated by the urge in men to retain their traditional position of power and authority over women which is rapidly eroding as modernity opens up more opportunities for women. Generally, men's traditional sources and positions of power are threatened as women acquire more economic and social resources in the modern socio-economic setting. The failure of men to meet their traditional responsibilities in the modern socio-economic setup has given rise to feelings of powerlessness. Consequently, violence is used to affirm a particular sort of social order, namely a patriarchal one.

METHODOLOGY

The study was carried out between June and July 1992 in Ayani and Kianda estates of Woodley location, Kibera division, Nairobi. Kibera division lies about 10km southwest of Nairobi's city center. According to the 1989 population census, Kibera division had a total population of 130,054 of which 51,391 were female (Central Bureau of Statistics, 1994). Kibera mostly is a residential district for low-income people, the majority of whom are in temporary and lowly paid jobs. The government dependency ratios are very high, and money is usually a source of conflict between spouses.

Qualitative and quantitative methods of data collection were used. A sample of 112 battered women was drawn from Ayani and Kianda. Convenient sampling, in which the researcher picks on any cases their fall on hand, was used to recruit subjects for the study. By this sampling procedure, it became possible to interview only respondents who were willing to answer personal questions concerning their personal experiences with violent partners. Each of the 112 women was asked formal and informal questions. In addition, 40 of the respondents took part in individual informal discussions immediately after completing the questionnaire.

Informal interviews and discussions were conducted with 25 key informants mainly drawn from organizations that dealt directly with women's issues, such as the Women Bureau in the Ministry of Culture and Social Services and *Maendeleo ya Wanawake* (National Organization for Women in Kenya). I also conducted informal discussions with legal and police officers. Reliance was also made on secondly sources of data such as annual reports from the Women's Bureau, court records and the existing literature on this subject.

During the interview, direct observations were made and responses were recorded immediately or afterwards. Each interview was subjected to content analysis.

A major methodological drawback is that findings of this study are not generalizable beyond a self-selected voluntary sample of women who said they had been battered by men whom they lived with.

RESULTS

The results in the initial part of this section are drawn from the 112 respondents interviewed. Their mean age was 25 years. About two-thirds of them (59.8%) had primary education or less. The majority of the sample (87.8%) were not working. The 24 women (21.6%) who were working and/or had worked previously reported earning less than Kenya shillings 2,000 (which was at the time US\$40) per month, which is low considering the high inflation rate. All of the respondents were Christians, of whom 65 (72.8%) were Protestant while 47 (27.2%) were Catholics. Almost all the respondents (107 or 95.5%) were married or engaged in some marriage-like relationship while one woman was divorced, three were separated and one was widowed. These unions include several forms, including traditional marriages, civil or church marriages and consensual marriages. Some of these were polygynous unions. The respondents represented thirteen African ethnic groups (Luo 29.5%; Abagusii 11.9%; Abaluhya 18.8%; Agikuyu 17.0%; Akamba 9.8%; Ameru and Pokomo 1.8% each; Basoga, Nubian, Aduruma, Baganda and Kalenjin consisted 0.9% each). This reveals that violence is not limited to any one particular religion, age or ethnic group and social class as already stated in the literature.

It was found that 45.5% of the sample respondents had been battered at least once in their married life, while 26.5% were battered occasionally, 14.3% were battered regularly, and 13.4%, both regularly and occasionally. For those who were battered occasionally or regularly the modal response regarding the frequency of abuse was once a month. The battering ranged from only one blow to prolonged physical attacks. The beatings tended to increase in severity and frequency or both with time.

Wife battery is discussed in the paper in the light of the victims' perceptions and experiences with legal agencies and the reasons for their continued stay in violent relationships. It is important to note that in Kenya, wife battering is treated as common assault and thus, battered women rely upon the general criminal law for redress. Under the criminal law, domestic assaults fall within the ambit of offenses that endanger life and health. Such offenses are specified in the Penal Code Cap. 63 sections 134-152 of the Laws of Kenya.

The police are usually the first to approach from the legal machinery after any

episode of battery. Since most assaults tend to occur in the evenings or weekends, round-the-clock police availability is needed to provide immediate remedial responses. There are about 25 police stations in Nairobi, which maintain law and order. The police are normally the ones who receive complaints from the public. Then they make arrests for prosecution, or prepare charge sheets and prepare witnesses before presenting the cases to the courts for arbitration and judgment.

I. Legal Experiences

The study revealed that the majority of the battered women had not sought legal intervention against their batterers. Over 75% of the respondents had not sought any form of legal intervention. Only four respondents 3.6% had sought legal intervention. In 21.4% cases answers were found missing during the data analysis stage. These cases weaken my model considerably and inhibited further analysis. Wamalwa (1987) and Butegwa (1993 cited in Green, 1999: 27) have reported similar findings in Kenya.

Most respondents said they did not seek legal intervention for fear that if their complaints were taken seriously by the authorities, it would have meant divorce or a fine and/or imprisonment, an eventuality many respondents loathed as it would not only limit access to resources but also would negatively impact on the well-being of the entire household. It was explained further that divorce or separation would affect the socialization and growth of children, as the children stood to be stigmatized by other children in school which in turn was likely to affect their studies and by extension, their future. It is therefore not surprising that only few women come forward to seek legal intervention.

The respondents also stated that if battering were a condition of receiving any help at all in order to leave a relationship, then they would be forced to the invidious position of having to define to themselves and to the outside world as battered women. The label, "battered women" reinforces the negative self-image already engendered by the stigma attached to the status of a divorcee or single mother, which makes them look a disrepute, and saps the confidence so important in seeking legal redress. As one respondent put it, "A man is the owner of the house he can do whatever he wants ... the best thing is to keep silent."

However, the respondents cited several other factors as the reasons why they did not seek legal redress. A major reason commonly cited was that legal personnel, especially the police, the majority of whom are men, were very unpleasant and hostile to battered women whom they accused of being responsible for the violence. Some said that they had been asked for money (which they did not have in the first place) or for sexual favors upon which they gave up on legal intervention. Several women reported that they had been forced to go back to their unsafe homes. "Action is only taken after some have been killed." "The police are very unsympathetic to battered women" and in most cases they do not regard wife beating seriously. "They always encourage informal sanctions by encouraging the two parties to reconcile," one respondent said. It was revealed that law enforcement officers encouraged battered women to drop their complaints for the sake of children. "The woman is asked how she will manage if her husband (the breadwinner) is in jail." The attitudes and

procedures of the police tend to undermine the battered woman's resolve and basically puts off most women from seeking legal redress.

During discussions with key informants, especially the police officers, the issue of police reluctance to arrest and prosecute the batterer was raised. It was explained that more than half of the wife-battering cases were either withdrawn or dismissed by the woman before the court proceedings, or the battered women failed to give evidence against the abuser when the case came before the court. The police officers revealed that the victims frustrated them more than the offenders. They stated that female victims expected assistance they are not prepared for, as the police could not protect the women without making arrests or to arrest somebody without having witnessed the crime. This is why the police are usually reluctant to prosecute men who assault their wives and usually advise the complainant to report the matter to the village elder or to reconcile with the batterer.

In one of the discussions with the Kibera Resident Magistrate who was one of the key informants, it was revealed that a judge was likely to discount a woman's complaints about battering if she continued to live with her abuser a number of years after the violence began. In such circumstances, the court focuses not on the complaints, but rather on the reasons for bringing the matter to court them, which probably is an important area of investigation but digresses from the major issue. The magistrate also explained that crimes against intimates generally and battering in particular presented serious evidential difficulties. "As wife-assault occurs usually in private, the victim will often be the only witness to the conduct and thus her evidence will be crucial to prove the guilt of the accused," the magistrate said. However, if the woman's injuries were not significantly recent or apparent, she was likely to be denied access to the court. In some situations, battered women are incompetent to testify, and could not provide sufficient evidence to convince a criminal court. If she is competent, her abuser and others might influence her so that vital prosecution evidence is suppressed. Courts, therefore, impose lighter sentences in cases of domestic assault. Suspended sentences and warnings by judges are the most common forms of punishment. The result is that the husband eventually learns that he is unlikely to be punished or go to jail for this kind of assault. He is not deterred from assaulting his wife again.

The other reasons given by the women for not seeking legal intervention included: being afraid of the threats made by the husband about the consequence of reporting the battering to the police, cultural acceptance of battering or the desire to put the incident behind them and get on with life, costs involved in legal fees, burden of proving that the battering occurred, lack of knowledge on the existing avenues for legal aid, requirements to exhaust legal remedies, the bureaucratic nature of the legal system, and the need to involve other people and/or agencies to provide corroborating evidence. As a result, many victims feel deterred from pursuing legal remedies.

One informant from the Women Bureau and another from *Maendeleo ya Wanawake* concurred that in addition to the above hindrances, court procedures further served to deter victims, as courts were often limited to weekdays while assaults tended to occur at night and on weekends. The battered women must wait for the hearing to be scheduled. Frequent postponements of hearings reduced the number of

cases heard. During this time before the verdict, many battered women have no choice but to remain at home with their batterers. In such circumstances, they are susceptible to threats and pleadings that seek to make them withdraw the complaint or fail to give evidence when the charge is heard.

II. Why Battered Women Stay

With the exception of five women (three separated, one widowed and one divorced) all the other respondents were still engaged in intimate relationships with their batterers. These women stated that they continued to stay with their batterers because they wanted the abuse to end, but not the relationship. However, the most cited reasons why respondents continued to stay with their batterers were: harsh and extreme difficulties in finding alternative accommodation or no safe place to go, fear of the shame and embarrassment brought to the family, fear of the social stigma attached to divorce, acceptance of battering as a normal cultural practice, sympathy or need for their spouses, children or financial constraints, lack of support from close family members, distance from relatives and social support networks i.e., friends, and feelings of guilt for being responsible for the violence.

As the study progressed, it became abundantly clear that it was the men who controlled family resources and finances. Such control of resources is an important indicator of power distribution within the family. Women's poor earning power and their financial dependency on husbands render them vulnerable and powerless against male violence. The respondents' economic dependency on men made it difficult for them to leave the batterers and start a new life alone. Often, it is physically impossible for women to leave as they literally have no place to go, or the means to get away and live alone, or more usually, with her children, and there are no services available to them. The respondents further stated that it would be impossible for them to maintain themselves and usually their children. "I will not be able to keep the children in comfort, to which they are accustomed," was a common remark made by the respondents. A housewife who has children tends to tolerate the abuse because she cannot manage to take care of the children alone. She has no choice but to remain in an abusive relationship.

Another commonly cited reason why respondents failed to leave abusive partners was that they felt responsible for the violence. They tended to employ self-blame more often than they blamed their batterers. This self-blame led to low-esteem, depression and feelings of helplessness, which in turn trapped the battered women in abusive relationships. "I feel bad that I cannot make my husband happy ... he beats me only when I make mistakes," said one respondent. Some respondents even suggested that the longer they experienced the abuse, the more helpless they felt. This reduced the likelihood of extricating themselves from abusive relationships. One respondent who had divorced thrice because of battering and remarried said, "it is very hard for me to find a man who does not batter me ... perhaps I am the one who is not perfect; that is why it is hard for me to find a non-violent man ... it has now become a normal aspect of my life, and I have to accept it." Thus, violence itself makes women become even more dependent, since it undermines self-esteem, and the capacity to take action diminishes.

Respondents tended to concur that there were other ways of solving marital disputes than separation or divorce. One Agikuyu woman explained: "Most of our traditions hold marriage as being for keeps," and that is why the Agikuyu pack the girl's bed once she gets married. Therefore, she is not supposed to return to her parents' home after marriage. She is supposed to solve all her problems in her own home, without going back to her parents' home. "Any woman who makes her private problems public than necessary should be ashamed of herself, because she should know how to handle such problems without resorting to such embarrassing and shameful situations," retorted another respondent.

Leaving is considered one method of solving domestic marital problems. It was revealed that the victims believed that by leaving their batterers for a while to their parents' homes, their husbands would come for them, and by only agreeing to return after both their parents had discussions, all their marital problems would be solved. To their disappointment, such run-away missions did not accomplish much, and in many cases, created more problems when husband-and-wife secrets emerged as each tried to argue how bad the other is and why they have disputes.

Another elderly woman who had divorced and married anew told me, "some husbands like the idea of their wives leaving them or batter them to instigate a runaway mission that will give them freedom to go in for other women. So women should be wiser," retorted the woman. She continued to explain that some husbands were so used to their wives leaving them that they were able to go on with their lives even in their wife's absence as if nothing was amiss. She continued to say, "some women think leaving batterers hurts them while in actual fact it does not ... Some husbands will not bother to go for their wives."

One respondent who had been married for twenty years and still lived with the violent man, told us how she got disgusted by women who left their batterers only to return after a while. She described them as "ridiculous women." She considered violence that resulted in physical injury as perhaps the only case that could give a woman a genuine reason to leave the batterer. One key informant at the Women's Bureau concurred with her and added, "it is silly for a woman to pack her bags and leave her matrimonial home just to pack them again after months and return." What she meant was that after all, marriage was not always a bed of roses, and such incidents were a part of the ups and downs of a marriage and women should be prepared for them.

CONCLUSION

Although the extent of gender violence in Kenya and particularly in urban areas is unknown, there is substantial evidence to suggest that wife battering is a major social problem that has escalated into epidemic proportions in recent years. It has attracted considerable attention, which has led to an increasing realization that the family far from providing a place of safety is one of the most dangerous institutions. As the United Nations declared, "... the family can be a cradle of violence and much of the violence is directed at the female members" (1989: 14).

Although wife battering is a glaring problem in Kenya, my informants have

revealed that there are no explicit legal provisions to deal with it. It is treated as a common assault and the wife beater can be fined or jailed under the assault charge. But even with this provision, law enforcement officers are usually reluctant to prosecute. In most cases they treat it as a domestic matter and encourage the victims to try and reconcile with their husbands. It is also common for those women to be ridiculed because most of the people they report to are men, and the battered women decide to suffer silently at home. Society itself indirectly seems to contribute to wife-battery. The Kenyan attitude to women today is still not divorced from the traditional African context of marriage and the subordinate position of women.

The victims themselves contribute to the problem. Many of them do not seek redress or leave the batterer, because the battered woman seeking legal intervention or leaving the home carries a social stigma. Because of the need to maintain the social status and positive image attached to a successful marriage and to evade the social stigma, many women are battered secretly in their homes without coming out in the open.

In the final analysis, it is best perhaps to conclude that violence against wives is a function of the patriarchal power structure within the family, where men are superior to women and the women are men's possession to be treated as they wish and consider appropriate. The economic dependency of women on men more than help to explain why battered women do not leave batterers or take legal action against them.

Finally, my sample is limited with regard to generalizing these findings to the population of Kenyan abused women as a whole. Nonetheless, I believe that the methods employed in the present study are beneficial for enhancing our understanding the socio-legal experiences of battered women.

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